IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.388 OF 2007

Krishna Sataba Patil & Ors. ...Appellants

vs.

Kallappa Sataba Patil & Ors. ...Respondents

Mr.M.R.Suryawanshi for the Appellants
Mr.S.S.Redekar for Respondent Nos.1 to 4.

CORAM: A.S.OKA,J.
DATE : DECEMBER 11,2007.

P.C.:

1. Heard Advocate for the Appellants. The first Appellant is the unsuccessful first defendant. The first Respondent is the original plaintiff. The first Respondent filed a suit simplicitor for injunction restraining the Appellant and other defendants from obstructing his joint possession over the suit properties till the partition is effected by metes and bounds. The trial court decreed the suit by granting perpetual injunction for protecting the joint possession of the first Respondent. The said decree has been confirmed in the Appeal.

2. The learned Advocate for the Appellants submitted that in a suit filed in the year 1969 at the instance of the first Respondent, decree for partition and separate possession was passed and the said decree has not been implemented till today. He submitted that the very fact that the said decree is not executed till today shows that the first Respondent was

not in possession of any portion of the suit properties. He, therefore, submitted that the first Respondent could not have claimed injunction.

3. I have given careful consideration to the aforesaid submissions. It is an admitted position that no effect was given to the decree for partition passed in respect of the suit properties. The Appellate Court has referred to the admission of the Appellant in his cross examination that the suit properties have not been partitioned. He also admitted that he was cultivating the suit properties as a manager of the joint Hindu family.

4. It is an admitted position that the actual physical partition by metes and bounds has not been effected as per the decree for partition which holds that the first Respondent-Plaintiff has an undivided share in the suit property. There is no case of ouster of the first Respondent made out and that is the reason why the courts below have protected the joint possession of the first Respondent along with other parties to the suit. No substantial question of law arises. Second Appeal is dismissed with no order as to costs.

JUDGE